IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19861 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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MOHMMADHUSSAIN @ MUNNA S/O. GULAMRASUL SHEIKH - Petitioner(s)
Versus
COMMISSIONER OF POLICE AHMEDABAD & 2 - Respondent(s)

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Appearance :
MS BANNA S DUTTA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 24/10/2005

ORAL JUDGMENT

1. The order of detention dated 30.08.2005 passed by the Police Commissioner, Ahmedabad City, respondent no.1 herein in exercise of power under sub-section (1) of Section 3 of

Prevention of Antisocial Activities Act, 1985 (for short PASA) detaining the detenue U/s. 2 (b) of the “Act” as “Bootlegger” on the ground that the order of detention is illegal and unconstitutional and violative of Articles 14, 21, 22(1), 22(5) and 226 of the Constitution of India and being illegal and unconstitutional requires to be quashed and set aside.

2. The order of detention dated 30.08.2005 alongwith grounds contained therein reflects registration of solitary offence being C.R.No.1429 of 2005 dated 27.08.2005 registered with East Prohibition Station for the offences punishable under Sections 66 (1) (b), 65(a)(e), 83 and 116 1 (b) of the Bombay Prohibition Act, 1949.

The detaining authority has also considered inadequacy of remedies against the detenue under ordinary law including the

provisions under the Bombay Police Act, 1951 and therefore, the powers have been exercised and the order of detention is passed.

3. The above mentioned facts are the basis for arriving at subjective satisfaction that the activities carried out by the detenue are prejudicial and resulting into disturbance of public order and/or general health of the public, and therefore, invoking of powers under sub-section (1) of Section 3 by the Detaining Authority is justified.

4. Learned counsel for the petitioner has challenged the order of detention dated 30.08.2005, mainly on the ground that the solitary offence of registration of crime under the provisions of Bombay Prohibition Act, cannot by itself lead to disturbance of

public order or the general health of public and therefore, the Detaining Authority has illegally invoked the power branding the detenue as a bootlegger as defined under Section 2(b) of the Act. In support of his argument, the learned advocate has placed reliance on the decisions reported at AIR 1989 SC 497 and the decision of Letters Patent Appeal No.223 of 2000 of the Division Bench of this Court. Therefore, according to learned advocate for the petitioner, since there is no nexus between the activities carried out by the detenue and the disturbance of public order as stated in the grounds or in the order of detention and the only material did not exist against the detenue, as stated by the Detaining Authority, by itself do not form relevant material for arriving at subjective satisfaction for passing the impugned order of detention that the activities are

disturbing the public order and even in future also such activities will be continued by the detenue.

5. Learned A.G.P. Mrs. Hansa B. Punani has tried to justify the order of detention on the ground that the registration of crime against the detenue is relevant material and in given case, even registration of solitary offence may lead to disturbance of public order and therefore, she has submitted that this is not a case where the power under Article 226 of the Constitution of India requires to be exercised.

6. Having considered the rival submissions, perused the relevant records of the case, it is evident that there is a registration of solitary offence punishable under various sections of the Bombay Prohibition Act, 1949. It is pertinent to note that though it

is stated in the order, though it is also stated in the grounds supplied alongwith the order of detention to the detenue and about the prejudicial activities of the detenue indulging into bootlegging and thus, disturbing the public order and public health, there appears to be absence of any connecting relevant materials by which it can be concluded that the activities of the detenue as a bootlegger have a potential or gravity to disturb even tempo of public life or normal life. Simply registration of solitary offence and seizure of bottles of IMFL, by itself cannot lead to a presumption that general health of the public is also likely to be affected. In absence of the materials for arriving at such subjective satisfaction about the prejudicial activities of the detenue disturbing the public order and general health of the public and further to assume about

preferring bail application by the detenue and grant of such bail application by the competent court of law and further that the detenue to continue in such activities even after obtaining the order of bail, all will have to be based on relevant and credible materials and in the present case when the detenue is under police remand, conclusion of the detaining authority about release of detenue on bail in event of his preferring bail application before the Competent Court and on grant of the same the detenue may indulge in similar antisocial activities in future, and to pass the order of detention is a case of subjective satisfaction being vitiated on the ground of non-application of mind on the part of the detaining authority to such aspects and on this ground also, impugned order requires to be quashed and set aside.

That registration of solitary offence for the offence punishable under the Bombay Prohibition Act, 1949 by itself cannot be said to have bearing or nexus on the disturbance of the public order or the general health of the public and, therefore, the decision reported in the case of **Darpan Kumar Sharma Vs. State of T.N.,** reported in 2003 (2) SCC 313 is applicable in the facts of the present case particularly para-5 which reads as under:-

> “5. The basis upon which the petitioner has been detained in the instant case is that he robbed one Kumar at the point of knife a sum of Rs.1,000. Any disorderly behaviour of a person in the public or commission of a criminal offence is bound to some extent, affect the peace prevailing in the locality and it may also affect law and order, but the same need not affect maintenance of public

order. Under the definitions in the Act, it is stated that in the case of “goonda” the acts prejudicial to public order are “when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order”

The important question considered by the Supreme Court “ whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order” is very well explained in the decision reported in 2000 (4) GLR 3623 in the case of **Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat and Ors.** as under:-

“ Even an activity violating an ordinary legal provision may in a given case be a matter of public order. It is

the magnitude of the activities and its effect on the even tempo of life of the society at large or with a section of society that determines whether the activities can be said to be prejudicial to the maintenance of public order or the same amounted to breach of law and order. The fall-out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society."

7. As rightly submitted by the learned advocate for the petitioner, the decision reported in Letters Patent Appeal No.223/2000, decision reported in the case of **Darpan Kumar Sharma Vs. State of T.N.,**

reported in 2003 (2) SCC 313 AIR as held by the Apex Court and our High Court, the registration of solitary offence can not have effect of disturbing the public order or general health of public except the specific materials on the basis of which reliance is placed by the detaining authority for passing the order, and, therefore, the order of detention dated 30.08.2005 passed by the respondent no.1 herein, is quashed and set aside.

8. The detenue Mohmmadussain @ Munna S/o. Gulamrasul Sheikh is ordered to be set at liberty if not required in any other offence by any other authority. Direct Service is permitted. Rule is made absolute.

(ANANT S. DAVE, J.)

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